

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRANDON T. MCNAIR,

Plaintiff,

-v-

6:23-CV-699

UTICA POLICE DEPARTMENT *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

BRANDON T. MCNAIR

Plaintiff, Pro Se

421 Margaret Street

Herkimer, NY 13350

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On June 12, 2023, *pro se* plaintiff Brandon T. McNair (“plaintiff”) filed this 42 U.S.C. § 1983 action alleging that various defendants violated his civil rights. Dkt. No. 1. Along with his complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2.

On June 26, 2023, U.S. Magistrate Judge Andrew T. Baxter granted plaintiff’s IFP application and advised by Report & Recommendation (“R&R”) that plaintiff’s complaint be dismissed with partial leave to amend. Dkt. No.

4. As Judge Baxter explained, plaintiff's claims against defendants Utica Police Department, Judge Michael L. Dwyer, Oneida County Courts, and District Attorney Scott McNamara must be dismissed with prejudice because those defendants were shielded from plaintiff's claims by various immunity doctrines. *Id.* However, Judge Baxter concluded that plaintiff might still be able to assert a viable claim, or perhaps claims, for "alleged constitutional violations surrounding his detention, arrest, and subsequent criminal prosecution as set forth in his complaint, against the appropriate defendants." *Id.*

Plaintiff has not filed objections. The time period in which to do so has expired. *See* Dkt. No. 4. Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

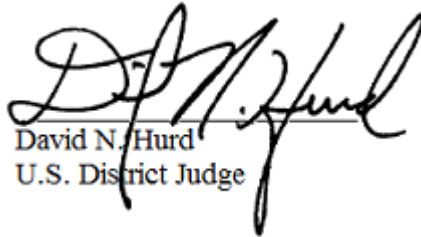
1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's complaint is DISMISSED with prejudice against defendants Utica Police Department, Judge Michael L. Dwyer, Oneida County Courts a/k/a Oneida County Courts and Officials, and District Attorney Scott McNamara;
3. Plaintiff's complaint is otherwise DISMISSED without prejudice;

4. Plaintiff shall have forty-five days in which to file an amended complaint that conforms with the instructions set forth in Judge Baxter's June 26, 2023 Report & Recommendation;

5. If plaintiff files an amended complaint within this forty-five-day period, the matter shall be REFERRED to Judge Baxter for further review and any other action as appropriate; and

6. If plaintiff does not file an amended complaint within this forty-five-day period, the Clerk of the Court is directed to close this action without further Order of this Court.

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: August 1, 2023
Utica, New York.